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18 UNITED STATES DISTRICT COURT
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,) No. CR 99-1094-FMC
21) CV 08-4132-FMC
22 Plaintiff,)
23) GOVERNMENT'S RESPONSE TO COURT'S
24 v.) AUGUST 19, 2008 ORDER FOR
25) ADDITIONAL BRIEFING RE DEFENDANT'S
26) § 2255 MOTION
27 JOHN EDWARDS,)
28 Defendant.) [No hearing set]

)

1 In its August 19, 2008 order, the Court ordered that the
2 government brief defendant's claim that the offenses of which he
3 was convicted occurred in 1989 and 1990, but the statute which
4 provided for the applicable one-year time bar in respect of
5 defendant's motion was not effective until 1996. The issue was
6 framed as implicating the Ex Post Facto Clause.

7 The government respectfully submits that there is no Ex Post
8 Facto issue. The Ex Post Facto Clause forbids Congress to enact
9 any law "which imposes a punishment for an act which was not
10 punishable at the time it was committed; or imposes additional
11 punishment to that then prescribed." Weaver v. Graham, 450 U.S.

1 24, 28 (1981) (citation omitted, footnote omitted). The applicable
2 statute, 28 U.S.C. § 2255, in respect of the one-year time bar,
3 does not impose any punishment.

4 Moreover, it was effective before defendant was charged in
5 1999. It is irrelevant that defendant's criminal conduct may have
6 occurred prior to the effective date of the applicable statute
7 because the statute only deals with relief from convictions or
8 sentences once adjudged final, not offense conduct. See e.g.,
9 § 2255(1) ("A 1-year period of limitation shall apply to a motion
10 under this section. The limitation period shall run from the
11 latest of - (1) the date on which the judgment of conviction
12 becomes final . . .").

13 Accordingly, it is irrelevant that defendant's offenses for
14 which he was convicted and sentenced after the effective date of
15 the applicable statute may have occurred prior to the date of the
16 statute's enactment (or amendment).

17 Thus, based on the foregoing and upon the government's motion
18 to dismiss, defendant's motion should be dismissed.

19
20 DATED: September 18, 2008 Respectfully submitted,

21 THOMAS P. O'BRIEN
22 United States Attorney

23 CHRISTINE C. EWELL
24 Assistant United States Attorney
Chief, Criminal Division

25 _____ /S/
26 MARK AVEIS
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UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE

I, YOLANDA AGUAYO, declare:

That I am a citizen of the United States and

resident or employed in Los Angeles County, California; that my business address is the Office of the United States Attorney, United States Courthouse, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of eighteen years, and I am not a party to the above--entitled action;

That I am employed by the United States Attorney for the Central District of California

who is a member of the Bar of United States District Court for the Central District of California,

at whose discretion I served a copy of: GOVERNMENT'S RESPONSE TO COURT'S AUGUST 19, 2008 ORDER FOR ADDITIONAL BRIEFING RE DEFENDANT'S § 2255 MOTION

Service was:

3 1] Placed in a closed envelope,
4 for collection and interoffice delivery
 addressed as follows:
 Mail, addressed

Placed in a sealed envelope
for collection and mailing via
United States
as follows:

5 [] By hand delivery addressed as follows:

|| By facsimile as follows:

1 By messenger as follows:

|| By federal express as follows:

**JOHN EDWARDS
P.O. BOX 260464
ENCINO, CA 91426**

This Certificate is executed on September 17, 2008, Los Angeles, California.

I certify under penalty of perjury that the foregoing is true and correct.

Yolanda Aguayo
YOLANDA AGUAYO